while mentally unbalanced, it is invalid even when the grantee purchases without knowledge of these facts. *Hayden v. Latch* (1921, Iowa) 182 N. W. 868. So also the husband is not estopped when his lessee knew that the wife was insane. *Peterson v. Skidmore* (1921, Kan.) 195 Pac. 600. However, if a new homestead is acquired, the husband is estopped to deny the validity of a deed executed by him alone on the former homestead. *Fisher v. Gulf Protection Co.* (1921, Tex. Civ. App.) 231 S. W. 450. Upon examination it will be found that the cases which seem to hold that the deed, being invalid, cannot operate as an estoppel against either the husband or the wife, are in fact based upon the ground that there was no proof of fraud exercised upon the grantee, rather than upon the alleged rule that "neither husband nor wife can be estopped from asserting the homestead right as against a grant or mortgage not executed in the mode prescribed by law." 13 R. C. L. 663; 15 Cyc. 686; see *Clark v. Bird* (1909) 158 Ala. 278, 48 So. 359; *Gillam v. Wright* (1910) 246 Ill. 398, 92 N. E. 906; *Ekblaw v. Nelson* (1914) 124 Minn. 335, 144 N. W. 1094. (In regard to an action for breach of contract to convey a homestead, see 4 A. L. R. 1272, note.) It can hardly be questioned that an estoppel could not have been set up against the joint interest of the husband if the wife had remained alive. In view of his fraudulent manifestations, however, the court seems to have reached a very just result.

INSURANCE—EXPRESS WARRANTY AS TO HEALTH—GOOD FAITH OF APPLICANT.—In an action upon a life insurance policy wherein the insured expressly warranted the truth of the statements set out in the application, questions as to whether the insured had consulted a doctor within five years or had ever had pleurisy were incorrectly answered in the negative. *Held,* that as the facts did not show that the insured knew or should have known the nature of his affliction when examined, the warranty was not broken and the beneficiary could recover. Cothran, J., *dissenting*. *Sligh v. Soverign Camp* (1921, S. C.) 109 S. E. 279.

By the great weight of authority, the incorrectness in fact of warranties as to bodily health will entirely avoid the policy, the good faith of the applicant being immaterial. *National Annuity Association v. McCall* (1912) 103 Ark. 201, 146 S. W. 125; *Layton v. New York Life Ins. Co.* (1921, Calif. App.) 202 Pac. 958; 15 L. R. A. (N. S.) 1277, note. The decision in the instant case, however, may be noted as an extreme example of a tendency of some courts to avoid so strict an interpretation of "express warranty clauses" and to adopt the view that the applicant warrants only the honesty and good faith of his opinion as to his bodily condition. This is more just to the policy-holder who can otherwise never be sure of the validity of his contract. *Moulor v. American Life Ins. Co.* (1884) 111 U. S. 335, 4 Sup. Ct. 466; see *Rasicot v. Royal Neighbors of America* (1910) 18 Idaho, 85, 98, 108 Pac. 1048, 1052. In many states it has been necessary to resort to legislation to avoid the orthodox construction of warranty clauses. Such statutes practically abolish the effect of warranties as to health. See 2 Cooley, *Briefs on Insurance* (1905) pars. 1189-1195. They are constitutional. *Hancock Mutual Life Ins. Co. v. Warren* (1901) 181 U. S. 73, 21 Sup. Ct. 535. One statute has gone so far as to provide that the issuance of a certificate of health by the appointed medical examiner estops the insurer from asserting that the applicant was not in the state of health required by the policy. Iowa Ann. Code, 1897, sec. 1812. It is difficult to perceive how the instant court could have construed a warranty that the insured had not consulted a doctor within five years to have been made in good faith, when the evidence showed a hospital operation within such time. See 18 L. R. A. (N. S.) 362, note. Moreover, both of these contested warranties were obviously material to the contract. A construction reducing the effect of an immaterial warranty to that of a representation should be met with approval, but where the warranty is both material and false, there can be no

equity in charging an insurer who has been so induced to assume the risk. See *Blenke v. Citizen's Life Ins. Co.* (1911) 145 Ky. 332, 342, 140 S. W. 561, 565.

INTERSTATE COMMERCE—STATE CONTROL OF ANIMALS FERAE NATURAE.—The Alabama Shrimp Act made it unlawful to transport by water shrimp, taken from the waters of the state, beyond the state boundary, unless the usual price paid at the place to which they were transported was higher than that paid within the state; imposed a tax on shrimp so transported; and prohibited any person, who had not for more than a year been a *bona fide* resident of the state, from catching shrimp for shipment out of the state by water. Gen. Acts, 1919, secs. 8, 12. The plaintiff, who was engaged in the shrimp packing business in Mississippi, brought suit to enjoin the enforcement of this act. *Held*, that these regulations were void as in violation of the commerce clause of the United States Constitution. *Elmer v. Wallace* (1921, N. D. Ala.) 275 Fed. 86.

Shrimp, with fish in general, may properly be classified as animals *ferae naturae*. *Gratz v. McKee* (1919, C. C. A. 8th) 258 Fed. 335; *State v. Adams* (1920) 142 Ark. 411, 218 S. W. 845. In so far as there can be property in fish in streams, title is in the state with an exclusive power of control. *State v. Blanchard* (1920) 96 Or. 79, 189 Pac. 421; *Gratz v. McKee* (1920, C. C. A. 8th) 270 Fed. 713; *State v. Hume* (1908) 52 Or. 1, 95 Pac. 808; *Commonwealth v. Cosick* (1910) 19 Pa. Dist. R. 309. Even migratory fish in interstate navigable streams or in coast waters are subject to exclusive state regulation while within the state boundaries. Gould, *Waters* (3d ed. 1900) par. 38; *State v. McCullagh* (1915) 96 Kan. 786, 153 Pac. 557. Although the fish, after being caught, are to be transported beyond state limits, Congress may not, under the guise of interstate commerce, regulate the catching of them. *Geer v. Connecticut* (1895) 161 U. S. 519, 16 Sup. Ct. 600. Such legislation is within the proper police power of the state, although it results in harm to the fishing industry in neighboring states. *Union Packing Co. v. Shoemaker* (1921) 98 Or. 659, 194 Pac. 854. Nor is this power of control terminated by the capture and reduction to possession of an animal *ferae naturae*. The state may follow wild game into the hands of an individual so as to prohibit its coming under federal interstate commerce regulation. *United States v. McCullagh* (1915, D. C. Kan.) 221 Fed. 288. It is to be noticed in all of these cases, where statutes similar to the instant act have been upheld, that their primary purpose was to preserve wild game for the benefit of the citizens of the state. But when the statute has no protective purposes, either as to animals or citizens, and is designed to discriminate against the industries of neighboring states by preventing shipments out of the state except on arbitrary conditions as to price, etc., the police power seems to have been abused at the expense of federal control over interstate commerce. Cf. *State v. Savage* (1919) 96 Or. 53, 184 Pac. 567.

MANDAMUS—WHEN ISSUABLE—DISCRETION OF CITY COUNCIL.—Under New York statutes a bus owner is required to obtain the consent of the local authorities as well as that of the State Public Service Commission before he is privileged to operate. Laws, 1915, ch. 667; 1919, ch. 307. The city council of Newburgh, after a hearing, denied such consent to the relator upon the grounds that his bus line was not a public necessity or for the best interest of the city, whereupon an action was brought to compel the city council by mandamus to grant such consent. *Held*, that the writ should be granted. *People, ex rel. Aber, v. Leonard* (1921, N. Y. Sup. Ct.) 116 Misc. 591.

That city councils are amenable to the writ of mandamus as are others upon whom public duties are imposed is unquestionable. *State v. Mayor and Council of Madison* (1919) 170 Wis. 133, 174 N. W. 471; *Harman v. City of Parsons*